

IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ AUG 01 2005 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
BROOKLYN OFFICE

-----X	Docket#
UNITED STATES OF AMERICA :	04-CR-1018 (DGT)
- versus - :	U.S. Courthouse
ANTHONY MANISCALCO, :	Brooklyn, New York
Defendant :	June 13, 2005
-----X	

TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING
BEFORE THE HONORABLE ROANNE L. MANN
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

For the Government:

Roslynn R. Mauskopf, Esq.
United States Attorney

BY: Amy Busa, Esq.
Assistant U.S. Attorney
225 Cadman Plaza East
Brooklyn, New York 11201

For the Defendant:

Joel Winograd, Esq.

Official Transcriber:

Rosalie Lombardi
C.N.

Transcription Service:

Transcription Plus II
823 Whittier Avenue
New Hyde Park, N.Y. 11040
(516) 358-7352

Proceedings recorded by electronic sound-recording,
transcript produced by transcription service

Proceedings

1 THE CLERK: Criminal Cause for a Guilty Plea,
2 04-CR-1018, United States v. Anthony Maniscalco.

3 Counsel, please state your appearances.

4 MS. BUSA: Amy Busa for the United States.

5 MR. GURIN: William Gurin.

6 Good afternoon, your Honor.

7 THE COURT: Good afternoon.

8 THE COURT: For the defendant, Joel Winograd
9 and Matthew Enlick (phonetic).

10 Good afternoon, your Honor.

11 THE COURT: Good afternoon.

12 THE COURT: Mr. Maniscalco, I have before me an
13 order of referral from Judge Trager, the district court
14 judge assigned to this case.

15 This order refers the guilty plea proceeding to
16 me to hear. There's a consent portion at the bottom.

17 Is that your signature on it?

18 THE DEFENDANT: Yes.

19 THE COURT: Have you read this document and
20 discussed it with your attorney?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Do you understand what you've
23 agreed to by signing this document?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: I want to make sure that you do

Proceedings

1 understand.

2 This is Judge Trager's case. He is a United
3 States district court judge and he is the judge who will
4 sentence you and make the ultimate decision as to whether
5 to accept your guilty plea. If you wish, you have the
6 absolute right to have Judge Trager listen to your plea
7 and if you choose to do that there will be no prejudice
8 to you.

9 Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: On the other hand if you wish, I
12 will listen to your plea. I'm a United States magistrate
13 judge.

14 This proceeding is being tape recorded. For
15 that reason I'm going to ask you to keep your voice up so
16 I can make sure that all your responses are in fact
17 recorded.

18 A transcript will be made of the proceeding and
19 Judge Trager will review it to decide whether to accept
20 your plea. He'll also review it in connection with your
21 sentence.

22 Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you wish to give up your right
25 to have Judge Trager listen to your plea and proceed

Proceedings

1 instead before me at this time?

2 THE DEFENDANT: No.

3 THE COURT: You don't want to proceed before
4 me?

5 THE DEFENDANT: Oh, yes, I do want to proceed.
6 Sorry.

7 THE COURT: Let me repeat the question and
8 break it down.

9 Do you wish to give up your right to have Judge
10 Trager listen to your plea?

11 THE DEFENDANT: Yes.

12 THE COURT: Are you prepared to proceed before
13 me instead of Judge Trager?

14 THE DEFENDANT: Yes, yes.

15 THE COURT: Do you make this decision
16 voluntarily and of your own free will?

17 THE DEFENDANT: Yes.

18 THE COURT: Have any threats or promises been
19 made to you to induce you to agree to have me hear your
20 plea?

21 THE DEFENDANT: No.

22 THE COURT: I find that the defendant's consent
23 is knowing, intelligent and voluntarily.

24 Before accepting your guilty plea there are a
25 number of questions that I have to ask you to make sure

Proceedings

1 that it's a valid plea. If you don't understand any of
2 my questions, please, say so and I'll reword the
3 question.

4 **A N T H O N Y M A N I S C A L C O,**

5 **called as a witness, having been first duly sworn,**
6 **was examined and testified as follows:**

7 THE CLERK: Please state your full name for the
8 record.

9 THE DEFENDANT: Anthony Maniscalco.

10 THE CLERK: Please spell your last name for the
11 record.

12 THE DEFENDANT: M-A-N-I-S-C-A-L-C-O.

13 THE COURT: Mr. Maniscalco, you should
14 understand that having been sworn your answers to my
15 questions will be subject to the penalties of perjury if
16 you do not answer truthfully.

17 Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: How old are you?

20 THE DEFENDANT: Thirty-five.

21 THE COURT: How far did you go in school?

22 THE DEFENDANT: High school.

23 THE COURT: You're a high school graduate?

24 THE DEFENDANT: Yes.

25 THE COURT: Are you now or have you recently

Proceedings

1 been under the care of a doctor or psychiatrist?

2 THE DEFENDANT: No.

3 THE COURT: In the past 24 hours have you taken
4 any drugs, narcotics, medicine or pills or drunk any
5 alcoholic beverages?

6 THE DEFENDANT: No.

7 THE COURT: Have you ever been hospitalized or
8 treated for narcotic addiction or for any mental or
9 emotional problem?

10 THE DEFENDANT: No.

11 THE COURT: Is your mind clear now?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you understand what's going on
14 here now?

15 THE DEFENDANT: Yes.

16 THE COURT: Mr. Winograd, have you discussed
17 the matter of pleading guilty with your client?

18 MR. WINOGRAD: I have, your Honor.

19 THE COURT: In your view does he understand the
20 rights he'll be waiving by pleading guilty?

21 MR. WINOGRAD: I believe he does.

22 THE COURT: Is he capable of understanding the
23 nature of these proceedings?

24 MR. WINOGRAD: I believe he is.

25 THE COURT: Do you have any doubt as to his

Proceedings

1 competence to plead at this time?

2 MR. WINOGRAD: None whatsoever.

3 THE COURT: Have you advised him of the maximum
4 sentence and fine that can be imposed?

5 MR. WINOGRAD: I did, your Honor.

6 THE COURT: Have you discussed with him the
7 effect of the sentencing guidelines as well as the
8 Supreme Court's decisions in Booker and PhanPhan
9 (phonetic).

10 MR. WINOGRAD: Your Honor, we went over it
11 approximately one week ago at the Metropolitan Detention
12 Center in Brooklyn, New York and I discussed with him
13 exactly those things that you just mentioned.

14 THE COURT: Mr. Maniscalco, have you discussed
15 your case with your attorney and are you satisfied to
16 have him represent you?

17 THE DEFENDANT: Yes.

18 THE COURT: Have you seen a copy of the
19 indictment that's been filed against you?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Have you consulted with your
22 attorney about the indictment?

23 THE DEFENDANT: Yes.

24 THE COURT: The indictment contains a series of
25 counts or charges.

Proceedings

1 I understand that you're prepared to plead
2 guilty to Count Two of the indictment which charges an
3 arson conspiracy, specifically, Count Two alleges that
4 between approximately December 20 and December 22, 2001
5 you and your co-defendant and others knowingly,
6 intentionally and maliciously conspired or agreed to
7 damage and destroy by means of fire and an explosive a
8 building and other real and personal property used in an
9 activity that effected interstate commerce, specifically,
10 the store known as My Deli & Grocery located at 200 Rhine
11 Avenue, Staten Island, New York.

12 In order to prove you guilty of that offense
13 the government would have to prove the following beyond a
14 reasonable doubt: First, that at some time during that
15 approximate time period you did in fact enter into a
16 conspiracy or understanding or agreement with others;
17 second, the government would have to prove that the
18 object or purpose of that conspiracy was to commit arson
19 effecting interstate commerce. In order to establish
20 arson effecting interstate commerce, the government would
21 have to prove that it was the purpose of the conspiracy
22 to set fire or use an explosive to damage or destroy
23 certain property. Additionally, the government would
24 have to prove that the property that was to be damaged or
25 destroyed was used in or in any manner effected

Proceedings

1 interstate or foreign commerce. The government would
2 also have to show that you acted knowingly and
3 intentionally and not because of some mistake or innocent
4 reason. The government will also have to show that you
5 acted maliciously which means that you acted either
6 intentionally or with willful disregard of the likelihood
7 that damage would result.

8 Do you understand that charge?

9 THE DEFENDANT: Yes.

10 THE COURT: Have you discussed that charge with
11 your attorney?

12 THE DEFENDANT: Yes.

13 THE COURT: I now want to talk with you about
14 the rights that you'll be giving up by pleading guilty
15 but the first and most important thing you have to
16 understand is that you have an absolute right to plead
17 not guilty.

18 Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: If you plead not guilty, then under
21 the Constitution and laws of the United States you're
22 entitled to a speedy and public trial by jury with the
23 assistance of counsel on the charges contained in the
24 indictment against you.

25 Do you understand that?

Proceedings

1 THE DEFENDANT: Yes.

2 THE COURT: At the trial you would be presumed
3 to be innocent and the government would have to overcome
4 that presumption and prove you guilty by competent
5 evidence and beyond a reasonable doubt. You would not
6 have to prove that you were innocent and if the
7 government failed to prove you guilty beyond a reasonable
8 doubt, the jury would have the duty to find you not
9 guilty.

10 Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: In the course of the trial the
13 witnesses for the government would have to come to Court
14 and testify in your presence and your attorney would have
15 the right to cross-examine the witnesses for the
16 government, to object to evidence offered by the
17 government and to offer evidence on your behalf.

18 Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: At a trial, while you would have
21 the right to testify if you chose to do so, you could not
22 be required to testify. Under the Constitution of the
23 United States you cannot be compelled to incriminate
24 yourself. If you decided not to testify, the Court would
25 at your lawyer's request instruct the jurors that they

Proceedings

1 could not hold that against you.

2 Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: If you plead guilty and the Court
5 accepts your plea you'll be giving up your constitutional
6 rights to a trial and the other rights that I've just
7 discussed. There will be no further trial of any kind
8 and no right of appeal from the judgment of guilty. The
9 Court will simply enter a judgment of guilty on the basis
10 of your guilty plea.

11 Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: If you plead guilty, I'll have to
14 ask you questions about what you did in order to satisfy
15 myself and Judge Trager that you are in fact guilty of
16 the charge to which you seek to plead guilty and you'll
17 have to answer my questions and acknowledge your guilt.
18 In that way, you'll be giving up your right not to
19 incriminate yourself.

20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: Are you willing to give up your
23 right to a trial and the other rights that I've just
24 discussed?

25 THE DEFENDANT: Yes.

Proceedings

1 (Court Exhibit No: 1 for identification)

2 THE COURT: I have before me a plea agreement
3 that has been marked Court Exhibit 1. Turning to the
4 last page of that document, is that your signature on the
5 defendant's signature line?

6 THE DEFENDANT: Yes.

7 THE COURT: Have you read this entire document
8 and discussed it with your attorney?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you understand all the terms and
11 conditions of this agreement?

12 THE DEFENDANT: Yes.

13 THE COURT: Does this document fully and
14 accurately reflect your understanding of the agreement
15 you've reached with the government concerning your guilty
16 plea?

17 THE DEFENDANT: Yes.

18 THE COURT: Other than the promises contained
19 in this document, has anyone made any other promises that
20 have caused you to plead guilty?

21 THE DEFENDANT: No.

22 THE COURT: Has anyone made any promises to you
23 as to what your sentence will be?

24 THE DEFENDANT: No.

25 THE COURT: I now want to talk with you about

Proceedings

1 the sentencing scheme that's applicable here.

2 The statute that you're accused of violating in
3 Count Two carries a minimum term of imprisonment of five
4 years and a maximum term of imprisonment of 20 years.

5 Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: In addition to any prison term, the
8 sentencing court can impose a supervised release term to
9 follow any term of imprisonment. The supervised release
10 term could be as long as three years and if you violated
11 a condition of supervised release you could then be sent
12 back to prison for up to an additional two years.

13 If that happened you would not receive credit
14 for time already spent in prison, nor would you receive
15 credit for time previously served on post-release
16 supervision.

17 Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: In other words, if you violate a
20 condition of supervised release you could end up spending
21 up to an additional two years in jail regardless of how
22 much time you may have already spent in jail or on
23 supervised release.

24 Do you understand that?

25 THE DEFENDANT: Yes.

Proceedings

1 THE COURT: In addition to any prison term and
2 supervised release term, the sentencing court can also
3 impose a fine of up to \$800,000.

4 Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: The sentencing court can also
7 require that you make restitution to the victim or
8 victims of your offense and I understand from the plea
9 agreement that the government has estimated restitution
10 to be in the amount of about \$400,000.

11 If there is any issue about the amount of
12 restitution it will be up to Judge Trager to resolve that
13 dispute.

14 Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: I want to make clear to you that
17 restitution and a fine are separate and apart from one
18 another. The sentencing court can require both that you
19 pay a fine and that you make restitution. A fine is a
20 penalty that's paid over to the United States Treasury.
21 In contrast, restitution is an amount that is paid to the
22 victim or victims of a defendant's criminal activities as
23 a remedy for the wrong that the victim suffered.

24 Do you understand that?

25 THE DEFENDANT: Yes.

Proceedings

1 THE COURT: In addition to the other
2 consequences that I've already described, the sentencing
3 court will impose a mandatory \$100 special assessment.

4 Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: I now want to talk with you about
7 the sentencing guidelines.

8 Under the Sentencing Reform Act of 1984, the
9 United States Sentencing Commission has issued guidelines
10 for judges to consider in determining the sentence in a
11 criminal case.

12 Earlier this year the Supreme Court determined
13 that the guidelines are not mandatory, they are advisory.
14 However, the sentencing court is required to consider the
15 guidelines in determining what is a reasonable sentence
16 in the case.

17 Have you and your attorney talked about how the
18 guidelines might apply to your case?

19 THE DEFENDANT: Yes.

20 THE COURT: You should understand that the
21 Court will not be able to determine the guideline
22 sentence for your case until after the probation
23 department has prepared a presentence report and you and
24 your attorney have had an opportunity to read it and to
25 challenge the facts reported by the probation officer.

Proceedings

1 Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: You should also understand that
4 after it's been determined what guideline applies to a
5 case the Judge has the authority to impose a sentence
6 that is more severe or less severe than the sentence
7 called for by the guidelines, depending on what is a
8 reasonable sentence in the case.

9 Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: I'm now going to ask the attorneys
12 to tell me their calculations under the guidelines. You
13 should keep in mind that these are simply estimates on
14 their part.

15 It will be up to Judge Trager to do his own
16 calculation under the guidelines and he is not bound by
17 the attorney's calculations even if they happen to be in
18 agreement as to what they think the likely range of
19 imprisonment under the guidelines would be.

20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: Ms. Busa, I take it your
23 calculations is set forth in Paragraph 2 of the
24 agreement?

25 MS. BUSA: Yes, your Honor.

Proceedings

1 THE COURT: And you've calculated an adjusted
2 offense level of 24 which carries a range of imprisonment
3 of 51 to 63 months, assuming the defendant falls within
4 criminal history category 1. However, as you further
5 point out in that paragraph, because the applicable
6 statutory minimum term of imprisonment is five years, the
7 defendant's effective guidelines range will be no less
8 than 60 months; correct?

9 MS. BUSA: Yes.

10 THE COURT: Mr. Winograd, have you done your
11 own calculation under the guidelines?

12 MR. WINOGRAD: Yes, I have, your Honor.

13 THE COURT: What is the result of your
14 calculation?

15 MR. WINOGRAD: The calculation is the same
16 exact calculation that the government has come to.

17 We've discussed it together, Mr. Gurin and
18 myself, and the numbers that have just been spoken to by
19 the Court are the numbers that I reached independently of
20 the government and those are the numbers I've discussed
21 with my client.

22 THE COURT: All right.

23 Mr. Maniscalco, one thing I do want to point
24 out to you.

25 I had indicated earlier that the judge has the

Proceedings

1 discretion to impose a sentence above or below the
2 guideline range depending on what the judge concludes is
3 a reasonable sentence. However, the judge's discretion
4 is limited by any statutory mandatory minimum sentence
5 which in this case would be 60 months.

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: Therefore, if Judge Trager comes to
9 the same conclusion after doing the guidelines
10 calculation, the effective range of imprisonment under
11 the guidelines would be 60 to 63 months.

12 Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: I want to point out a particular
15 provision of this agreement.

16 Paragraph 4 provides in substance and in part
17 that you will not file an appeal or otherwise challenge
18 your conviction or sentence in the event the Court
19 imposes a term of imprisonment of 63 months or below.

20 Now, under this agreement you and your lawyer
21 are free to argue that Judge Trager should not sentence
22 you at the high end of the applicable guideline range and
23 your lawyer can argue that the judge should sentence you
24 to no more than the statutory mandatory minimum of 60
25 months.

Proceedings

1 Those arguments are available to you and your
2 attorney before Judge Trager sentences you. However,
3 once he does impose sentence, as long as he does not send
4 you to prison for more than 63 months, that is the end of
5 the matter. You've agreed not to file an appeal or
6 otherwise challenge your conviction or sentence as long
7 as the sentence is 63 months or less.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: You should also understand that
11 parole has been abolished and that if you're sentenced to
12 prison you will not be released on parole.

13 Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you have any questions you'd
16 like to ask me about the charge, your rights, or anything
17 else relating to this matter?

18 THE DEFENDANT: No.

19 THE COURT: Are you ready to plead?

20 THE DEFENDANT: Yes.

21 THE COURT: Mr. Winograd, do you know any
22 reason why the defendant should not plead guilty?

23 MR. WINOGRAD: Your Honor, I do not.

24 THE COURT: Are you aware of any viable legal
25 defense to the charge?

Proceedings

1 MR. WINOGRAD: None whatsoever.

2 THE COURT: Mr. Maniscalco, what is your plea
3 to Count Two of the indictment? Guilty or not guilty?

4 THE DEFENDANT: Guilty.

5 THE COURT: Are you making this plea of guilty
6 voluntarily and of your own free will?

7 THE DEFENDANT: Yes.

8 THE COURT: Has anyone threatened you or forced
9 you to plead guilty?

10 THE DEFENDANT: No.

11 THE COURT: Other than the agreement with the
12 government that has been marked Court Exhibit 1, has
13 anyone made any promise that has caused you to plead
14 guilty?

15 THE DEFENDANT: No.

16 THE COURT: Has anyone made any promise to you
17 as to what your sentence will be?

18 THE DEFENDANT: No.

19 THE COURT: Again, Count Two charges you with
20 arson conspiracy. Specifically, it alleges that between
21 December 20 and 22 of 2001 you and others knowingly,
22 intentionally and maliciously conspired to damage and
23 destroy My Deli & Grocery on Staten Island by means of
24 fire and an explosive.

25 Did you in fact do that?

Proceedings

1 THE DEFENDANT: Yes.

2 THE COURT: Would you tell me in your own words
3 what you did?

4 THE DEFENDANT: On 12/21/01, I drove others to
5 a grocery store on Rhine Avenue on Staten Island knowing
6 that a fire was going to be set at the deli at that
7 location.

8 THE COURT: Was that part of an agreement that
9 you had with these other people?

10 THE DEFENDANT: Yes.

11 THE COURT: You knew it was wrong to do that?

12 THE DEFENDANT: Yes.

13 THE COURT: You said that the location you're
14 referring to is My Deli & Grocery on Staten Island?

15 THE DEFENDANT: Yes.

16 THE COURT: Ms. Busa, you want to make a
17 proffer with respect to the interstate element?

18 MS. BUSA: The interstate element is that My
19 Deli & Grocery is a commercial deli that basically
20 transacts in goods that have traveled in interstate
21 commerce.

22 THE COURT: All right.

23 I take it that that element is not disputed by
24 the defense? Is that correct?

25 MR. WINOGRAD: It is not.

Proceedings

1 THE COURT: Ms. Busa, is there any further
2 inquiry you'd like me to make of the defendant?

3 MS. BUSA: No.

4 THE COURT: All right.

5 Based on the information provided to me, I find
6 that the defendant is acting voluntarily, that he fully
7 understands his rights and the consequences of his plea
8 and that there is a factual basis for the plea.

9 I, therefore, recommend acceptance of the plea
10 of guilty to Count Two of the indictment.

11 Do we have a date for sentence?

12 THE CLERK: Yes. August 25 at 12:30.

13 THE COURT: And that will be before Judge
14 Trager.

15 The probation department will be preparing a
16 presentence report. I urge you to cooperate with the
17 probation officer.

18 Is there anything else?

19 MR. WINOGRAD: May I inquire what day of the
20 week August 25 is?

21 THE CLERK: A Thursday.

22 THE COURT: All right.

23 Anything further?

24 MR. WINOGRAD: No, your Honor.

25 MS. BUSA: No, your Honor.

Proceedings

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. GURIN: No, your Honor.

THE COURT: Thank you very much.

(Matter concluded)

-oOo-

C E R T I F I C A T E

I, ROSALIE LOMBARDI, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 29th day of July, 2005.

Rosalie Lombardi

Rosalie Lombardi
Transcription Plus II